

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: January 31, 1992

FAA Order No. 92-8

In the Matter of:

JOHN R. WATKINS

)
)
) Docket No. CP91EA0270
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)

DECISION AND ORDER

Respondent John R. Watkins ("Respondent") has appealed from the oral initial decision issued by Administrative Law Judge Burton S. Kolko at the conclusion of the hearing held on September 19, 1991, in Pittsburgh, Pennsylvania.^{1/} In his initial decision, the law judge held that Respondent violated Sections 91.9, 91.75(a), and 91.87(h) of the Federal Aviation Regulations (FAR), 14 C.F.R. §§ 91.9, 91.75(a) and 91.87(h) (1988).^{2/} For the reasons set forth below, the law judge's decision is affirmed.

^{1/} A copy of the law judge's oral initial decision is attached.

^{2/} Part 91 of the FAR was recodified as of August 18, 1990. The citations in this opinion and order are to the former Part 91 sections, because the incident in question occurred prior to the recodification. The corresponding sections in the recodified Part 91 are as follows: former § 91.9 is now § 91.13; former § 91.75(a) is now § 91.123(a), and former § 91.87(h) is now § 91.129(h). The substance of these sections was not changed by the recodification.

(Footnote 2 continued on next page.)

On or about February 12, 1988, Respondent was the pilot in command of a Chautauqua Airlines Fairchild 227 aircraft on a scheduled IFR flight, Flight 3054, from Greater Pittsburgh International Airport to Lynchburg, Virginia. Respondent was operating the controls of the aircraft. After Respondent contacted ground control, the ground controller cleared him to taxi from his position on the ramp to Runway 28 Center as follows:

1456:16 GC-2 Thirty fifty four, turn left at tango,
taxi runway two eight center.

1456:19 CHQ3054 Thirty fifty four.

(Footnote 2 continued from previous page.)

14 C.F.R. § 91.75(b) (1988) provided as follows:

(b) Except in an emergency, no person may, in an area in which air traffic control is exercised, operate an aircraft contrary to an ATC instruction.

14 C.F.R. § 91.87(h) (1988) provided as follows:

(h) Clearances required. No person may, at any airport with an operating control tower, operate an aircraft on a runway or taxiway, or takeoff or land an aircraft, unless an appropriate clearance is received from ATC. A clearance to "taxi to" the takeoff runway assigned to the aircraft is not a clearance to cross that assigned takeoff runway, or to taxi on that runway at any point, but is a clearance to cross other runways that intersect the taxi route to that assigned takeoff runway. A clearance to "taxi to" any point other than an assigned takeoff runway is a clearance to cross all runways that intersect the taxi route to that point.

14 C.F.R. § 91.9 (1988) provided:

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

Complainant's Exhibit 4 at 1.^{3/}

After turning left onto taxiway tango, Respondent taxied on that taxiway, crossed Runway 28 Center, and held short of Runway 28 Left.^{4/} Respondent testified that he misunderstood the ground controller's instruction, because he thought that he had been cleared to Runway 28 Left, rather than Runway 28 Center. The ground controller testified that he saw Flight 3054 turn left at taxiway tango, but he lost sight of the aircraft soon afterwards due to reduced visibility conditions.^{5/}

When Respondent first contacted local control, the following transmissions occurred:

1458:25	CHQ3054	Chautauqua thirty ninety, Chautauqua thirty fifty four is ready.
1458:28	LC-1	Chautauqua thirty fifty four Pittsburgh tower, runway two eight center, taxi into position and hold.

^{3/} Complainant's Exhibit 4 is a transcript of the pertinent transmissions on the re-recording of the air traffic control communications.

^{4/} Taxiway tango intersects Runway 28 Center a relatively short distance from the threshold of that runway. Taxiway sierra runs parallel to Runway 28 Center. Taxiway tango crosses taxiway sierra, and Runway 28 Center and intersects another taxiway leading to the threshold of Runway 28 Left.

To taxi to the threshold of Runway 28 Center from his position on the ramp, Respondent would have turned left onto taxiway tango, taxied on taxiway tango, turned left at taxiway sierra, and taxied on taxiway sierra to the threshold of Runway 28 Center.

^{5/} The ground controller testified that the visibility was one mile with fog and snow showers.

1458:32 CHQ3054 Position and hold two eight center,
Chautauqua thirty fifty four.
1458:35 LC-1 Are you at the end?
1458:39 CHQ3054 That's affirmative.

Complainant's Exhibit 4 at 2. The local controller testified that he asked whether Flight 3054 was at the end of the runway because commuters sometimes like to depart from the intersection of Runway 28 Center and taxiway tango. The local controller could not see Flight 3054.

At the same time that Respondent was taxiing to Runway 28 Left, a USAir flight was on final approach for the same runway. At 1459:02, the USAir flight contacted the local controller and inquired whether there was an airplane on Runway 28 Left. Local control replied "No sir" and then cleared it to land. When the USAir pilot then insisted that indeed there was a small aircraft on that runway, the local controller instructed the USAir flight to go around. Subsequently, the following conversation took place between the local controller and Respondent:^{6/}

1459:24 CHQ3054 And Chautauqua thirty fifty four was
cleared onto two eight left, we're
clear on thirty two.

^{6/} Respondent claims that the co-pilot handled radio communications, but the tape reveals two voices speaking on behalf of Flight 3054. At this point, the voice on the tape speaking for Flight 3054 changes. Presumably, the co-pilot handled the radio until Respondent taxied off of Runway 28 Left, and then Respondent took over the radio, telling the controller that Flight 3054 had been directed to Runway 28 Left, not 28 Center.

1459:29 LC-1 No sir, you were on two eight center I thought.

1459:32 CHQ3054 Negative, we were cleared to taxi to (unintelligible) left and we called you from there.

Complainant's Exhibit 4 at 3. Respondent later confirmed that he had actually been on Runway 28 Left. He also informed the controller that he had been instructed twice to go to Runway 28 Left, once by ground control and once by local control.

Respondent testified at the hearing that he simply misunderstood the instructions, thinking that he had been instructed to go to Runway 28 Left. He explained that he had not been confused about his whereabouts on the airport. He argued that the ground controller's 1456:16 instruction "turn left at tango, taxi runway two eight center" was "ambiguous" because clearances to Runway 28 Left and Runway 28 Center may differ only by the word left or center. (TR-105).

In his initial decision, the law judge affirmed the allegations in the complaint. In the law judge's view, the ground controller's instruction was not ambiguous. The law judge found that once Flight 3054 heard the clearance and acknowledged it by repeating its flight number:

[I]t is the pilot's responsibility to be in the right place and it is not a violation of their duty for the air traffic controllers to assume that having given a clearance and heard an acknowledgement that the aircraft will be in the right place.

(TR-128). Finding no mitigating circumstances, the law judge affirmed the \$2000 civil penalty sought by Complainant.

On appeal, Respondent argues that Complainant failed to prove that he had violated Section 91.9.^{1/} He argues further that under the circumstances of this case, the abbreviated nature of the taxi instructions given by the ground controller justifies the reduction of the civil penalty. He contends that the controller should not have issued an abbreviated clearance because: 1) the controller could not see the aircraft from the tower due to poor visibility, and he had no alternative means of positive control (i.e., ground radar); 2) no pilot advisories were issued; 3) the initial taxi routes to Runways 28 Left and 28 Center are identical; and 4) it is not uncommon for pilots to misunderstand taxi instructions at that airport. In its reply brief, Complainant argues that the preponderance of the evidence supports the law judge's finding that Respondent violated Section 91.9 of the FAR, and that the full \$2000 civil penalty should be affirmed.

The preponderance of the evidence does support the law judge's finding that Respondent violated Section 91.9 of the FAR. The evidence demonstrates that Respondent deviated from the clearances given by the controllers several times. The ground controller's clearance to Respondent to taxi to Runway 28 Center authorized Respondent to taxi to, but not onto, Runway 28 Center. 14 C.F.R. § 91.87(h). Contrary to that clearance, Respondent crossed Runway 28 Center and proceeded

^{1/} Respondent does not contest the finding that he violated Sections 91.75(a) and 91.87(h).

to the threshold of Runway 28 Left, where he held short. When the local controller (at 1458:28) instructed Respondent's aircraft to taxi into position and hold on Runway 28 Center, Respondent incorrectly taxied into position on Runway 28 Left. Shortly afterwards, Respondent taxied onto Runway 32 without permission.^{8/}

These deviations were inherently dangerous. Any time that an aircraft crosses or enters an active runway without permission, there is a potential for a collision. When this incident occurred, air traffic control was using Runway 28 Left for landing aircraft and Runway 28 Center for takeoffs. The USAir flight on approach to Runway 28 Left was forced to abort its landing because Flight 3054 was at the threshold of that runway. Although, as the FAA inspector testified, the USAir flight probably would have flown over Flight 3054 and touched down further down the runway,^{9/} the potential for a collision still existed. "It has been established that '[p]roof of actual danger is unnecessary [to establish a violation of Section 91.9], for the regulation prohibits any careless or reckless practice in which danger is inherent.'" In the Matter of Terry and Menne, FAA Order No. 91-12 at 10 (April 12, 1991), quoting Haines v. Department of

^{8/} Respondent explained during closing argument that he had taxied onto Runway 32 "to try and correct a bad situation and would correctly be termed an emergency" (TR-125).

^{9/} The FAA Aviation Safety Inspector testified that an aircraft on an ILS approach should touch down about 1000 feet from the threshold.

Transportation, 449 F.2d 1073, 1076 (D.C. Cir. 1971), petition for reconsideration denied, FAA Order No. 91-31 (August 2, 1991), appeal docketed, No. 91-1414 (D.C. Cir. August 26, 1991).

Furthermore, Respondent acted carelessly by not listening attentively to the clearances given by the ground and local controllers. Id. Indeed, had Respondent listened carefully to the clearances, he would have realized that he had been directed to Runway 28 Center. Under the circumstances, Respondent might reasonably have wondered whether the ground controller wanted him to taxi to the threshold of Runway 28 Center or to the intersection of Runway 28 Center and taxiway tango.^{10/} The controller's instruction was quite clear, however, that Respondent was to go to Runway 28 Center, not Runway 28 Left. If Respondent was uncertain whether the controller had meant to say Runway 28 Left, rather than Runway 28 Center, Respondent (or his co-pilot) should have asked for clarification. In the alternative, Respondent could have requested progressive taxi instructions, i.e., an instruction specifying what turns to make and what taxiways to use.

^{10/} If Respondent had followed the clearance given by ground control literally, Respondent would have turned left onto taxiway tango and taxied along taxiway tango to the intersection of Runway 28 Center and taxiway tango. The ground controller apparently expected Respondent to taxi to the threshold of Runway 28 Center. The ground controller had indicated on the flight progress strip that Flight 3054 was at the threshold of Runway 28 Center.

In addition, when the local controller instructed Respondent to taxi into position on Runway 28 Center, Respondent should have realized that he was holding short of the wrong runway. Respondent even acknowledged he had received and understood this instruction to taxi into position and hold on Runway 28 Center when he responded: "Position and hold two eight center, Chautauqua thirty fifty four." Complainant's Exhibit 4 at 2.

Turning to the issue of sanction, the preponderance of the evidence supports the law judge's finding that \$2000 is appropriate in this case. None of the factors listed by Respondent in his appeal brief made the clearances by the ground and local controllers improper because both controllers made it quite clear that Respondent was to go to Runway 28 Center, not 28 Left. Respondent's deviations should not be excused because the weather prevented the controllers in the tower from seeing Respondent or because the controllers did not have any other means of positive control. Although Respondent's deviations were easy mistakes to make because of the initial similarity of the taxi routes to Runways 28 Left and Center,^{11/} his violations also illustrate the need for pilots to listen attentively to the clearances issued by air

^{11/} Clearances to Runway 28 Left and Runway 28 Center could differ by only one word--left or center. A clearance to Runway 28 Left from Respondent's position on the ramp when he contacted ground control would be: turn left at tango and taxi to Runway 28 Left. A clearance from that position on the ramp to Runway 28 Center would be: turn left at tango and taxi to Runway 28 Center.

traffic control. Thus, the initial similarity of the taxi routes (and the similarity of the clearances to these runways) does not justify a reduction of an otherwise reasonable sanction.^{12/}

THEREFORE, the law judge's initial decision is affirmed.
A \$2000 civil penalty is assessed.^{13/}



BARRY LAMBERT HARRIS
Acting Administrator
Federal Aviation Administration

Issued this 30th day of January, 1992.

^{12/} I am concerned in this case because the ground controller should have specified that Respondent was cleared to the threshold of Runway 28 Center (rather than the intersection of Runway 28 Center and taxiway tango). See footnote 9 supra. The ground controller's failure to specifically clear Respondent to the threshold, however, does not appear to have contributed to Respondent's mistake, and, therefore, does not excuse Respondent's carelessness.

^{13/} Unless Respondent files a petition for reconsideration within 60 days of service of this decision (under 49 U.S.C. App. § 1486), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1991).